UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,006	10/17/2003	Russell T. White JR.	END920030046US1	4391

23550 7590 07/17/2007	EXAMINER
HOFFMAN WARNICK & D'ALESSANDRO, LLC	LEVINE, ADAM L
75 STATE STREET	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 April 2007*.

2a)☒ This action is **FINAL.**   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-22* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Applicant's amendments and remarks filed April 24, 2007, are responsive to the office action mailed January 24, 2007. Independent claims 1,8,14, and 19 have been amended. Claims 1-22 are currently pending and considered in this office action.

Information Disclosure Statement

Based on a PALM entry, it appears that an information disclosure statement may have been filed on April 24, 2007. If such statement has been filed, it is unavailable for consideration by the examiner. If applicant wishes the consideration of said information disclosure statement, it is suggested that the statement be re-filed. The examiner apologizes for the inconvenience if an IDS has in fact been filed.

Response to Amendment

Pertaining to rejection under 35 USC §112 in the previous office action

Claims 1,8,14, and 19 were rejected under 35 U.S.C. 112, second paragraph. The claims have been adequately amended to clarify that the query or hierarchical structure do not dynamically generate a page, but that the page is generated based on the result of the query. The rejection is withdrawn.

Pertaining to rejection under 35 USC §101 in the previous office action

Claim 19 was rejected under 35 U.S.C. 101 because data structures not claimed as embodied on computer-readable media and not implemented in a computer

apparatus are descriptive material. The claim has been amended in a satisfactory

manner to overcome this rejection. The rejection is withdrawn.

Response to Arguments

Pertaining to rejection under 35 USC §102(b) in the previous office action

Applicant's arguments filed April 24, 2007, have been fully considered but they

are not persuasive. Applicant argues that the prior art does not "indicate that queries

that dynamically generate a page based on the result of the query are used to navigate

the browse tree." In response to applicant's argument that the references fail to show

certain features of applicant's invention, it is noted that the features upon which

applicant relies (i.e., queries that dynamically generate a page based on the result of

the query) are not recited in the rejected claim(s).

For purposes of response, the examiner assumes this refers to dynamically

generating a page based on the result of the query. Applicant supports this argument

by noting that the prior art does not actually use the term "query" and by declaring that

the prior art does not "indicate dynamic generation of a page." With regard to the term

query, this was addressed in the previous advisory action (see Paper #20061004). For

applicant's convenience, those remarks are reprised here.

The remarks indicate that applicant has a significantly more restrictive and

specific understanding of the word "query" than is suggested by the claims or the

specification. A "query" is a request for information, a question (see at least Paper

#20061004, PTO-892: Item U page 563, Item V page 955). Microsoft 's computer

dictionary defines "query" as "1. The process of extracting data from a database and presenting it for use. 2. A specific set of instructions for extracting particular data repetitively." Thus automatically generating a query is automatically generating instructions for extracting data, or automatically requesting data. The most restrictive definition is still broad enough to encompass both the prior art and the present application. Applicant does nothing to narrow this definition.

The prior art also indicates dynamic generation of a page (see at least column 2 lines 25-36, column 7 lines 5-24). These passages also indicate that the dynamic generation of a page occurs based on the result of a query. For more, please see the following rejection under 35 USC §102(b). Please note that the portion cited by applicant, column 7 lines 17-19, is not representative of the subject matter in the remainder of the cited portion, but merely refers to a minor aspect of the results presented on the dynamically generated page. The page is dynamically generated based on the results of a query, and among those results appear featured items and categories. The featured items and categories are themselves represented by hyperlinks that provide a direct path to the detail page with further information on those specific items.

Regarding the automatic generation of queries, in recalling an item the query is automatically generated for each level of the hierarchical structure. This is performed by both the present invention and the prior art as the query levels of the item are recalled from storage and/or replicated recursively in order to present the new query in process while bringing the highlighted popular item to the front of a category or

subcategory in which the item appropriately belongs. Spiegel refers to its hierarchical

structure as a browse tree, and to query levels as nodes (which can refer to either

categories or items). Spiegel describes automatically identifying nodes and calling them

to attention by elevating them along child-parent paths. These paths are the

hierarchical query levels described in the present application (see at least column 1

lines 60-66, column 2 lines 25-30, 41-43). This means that the each level of the query

is automatically generated and repeated.

Applicant is reminded that the examiner cites columns and line numbers in the

references as applied to the claims for the convenience of the applicant. Although the

specified citations are representative of the teachings in the art and are applied to the

specific limitations within the claims, other passages and figures may apply as well. It is

respectfully requested that, in preparing responses, the applicant fully consider the

references in entirety as potentially teaching all or part of the claimed invention, as well

as the context of the passage as taught by the prior art or disclosed by the examiner

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1.   **Claims 1-22 are rejected under 35 U.S.C. 102(b) as being anticipated by**

Spiegel (Paper #051102; US Patent No. 6,466,918).

Spiegel teaches all the limitations of Claims 1-22. For example, with regard to method claims 1-13, Spiegel discloses a method for storing items in a hierarchical structure, allowing users to select items within that structure, identifying frequently purchased items, and elevating them for display on a higher level in the structure than that on which they would normally appear (see at least Abstract, Figs. 1A-4, column 1 lines 5-15). Spiegel further discloses:

- storing items in a hierarchical structure: wherein each of the items is located using a database search query for each level of the hierarchical structure (see at least Abstract, Figs. 1A-8, column 1 lines 25-59); dynamically generating a page based on the result of the query (see at least fig.1A, column 2 lines 25-36, column 7 lines 5-24, 59- column 8 line 8). ,

- identifying at least one high frequency item: wherein the at least one high frequency item is an item that is frequently purchased (see at least Abstract, Fig. 3, column 1 lines 7-13, column 1 line 60 – column 2 line 36, column 6 lines 5-20); maintaining a record of the frequency that each of the items has been purchased (see at least Abstract, column 2 lines 12-24, column 3 lines 13-29, column 6 lines 5-20, 30-39. Please note: this element is interpreted as referring to the storage of information regarding the frequency of purchase of each item.); a separate record of the frequency of purchase of each of the items is maintained for each of a plurality of groups of users (see at least column 7 line 59-column 8 line 7, column 9 line 64 – column 10 line 16.).

- <u>automatically generating the query for each level of the hierarchical structure</u>: to display the at least one high frequency item on a high level page (see at least Abstract, Figs. 1A,2-4,11; column 1 line 60 – column 2 line 4, column 2 lines 26-36, column 6 lines 5-20).

- <u>presenting the item to an administrator</u>: selecting at least one high frequency item for display on the high level page (see at least Abstract, Figs. 1A,2-4,11; column 1 line 60 – column 2 line 4, column 2 lines 26-36, column 6 lines 5-20).

- <u>storing the operations performed by a user to select an item in the hierarchical structure</u>: analyzing the stored operations, obtaining the query for each level based on the stored operations (see at least Abstract, Figs. 1-4,5,7,9,11; column 1 line 60 – column 2 line 4, column 2 lines 26-36, column 6 lines 5-20, column 9 line 64-column 10 line 26.).

- <u>an identification system for identifying a user</u>: (see at least column 2 line 46 – column 3 line 12, column 6 line 40 – column 7 line 5, column 11 lines 34-50, column 12 line 61 – column 13 line 7).

Pertaining to system claims 14-18

Rejection of system claims 14-18 is based on the same rationale as noted above.

Pertaining to computer program product claims 19-22

Rejection of computer program product claims 19-22 is based on the same rationale as noted above.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

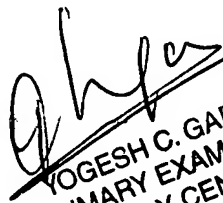than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Adam Levine whose telephone number is 571.272.8122.

The examiner can normally be reached on M-F, 8:30-5:00 Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Jeffrey A. Smith can be reached on 571.272.6763. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published

applications may be obtained from either Private PAIR or Public PAIR. Status

information for unpublished applications is available through Private PAIR only. For

more information about the PAIR system, see http://pair-direct.uspto.gov. Should you

have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from

a USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Adam Levine
Patent Examiner
July 8, 2007

YOGESH C. GARG
PRIMARY EXAMINER
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